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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,348	09/30/2003	Robert G. Jones	5007756-85	7128
21129	7590	06/30/2004	EXAMINER	
SPENCER, FANE, BRITT & BROWNE 1000 WALNUT STREET SUITE 1400 KANSAS CITY, MO 64106-2140			DEUBLE, MARK A	
			ART UNIT	PAPER NUMBER
			3651	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/676,348	JONES ET AL.	
	Examiner	Art Unit	
	Mark A. Deuble	3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2, 3, and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 states that the flipper art at least partially overlaps a belt of the conveyor when in a non-activated position, and claims 3 and 7 state that the support comprises a first member fixedly attached to a frame of the conveyor, however, the claims are directed to the ejector itself and not to the combination of an ejector and a conveyor belt. This creates a conflict between the independent base claims directed to the ejector itself and claims 2, 3, and 7 which appear to be directed to the combination of the ejector and a conveyor.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Scopatz et al. (U.S. Patent No 4,595,091).

Scopatz et al. shows an ejector used in a product determination and separation line including a conveyor belt 14 for transferring product from a first location. The ejector comprises

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a flipper arm 54, an actuator 56 for rotating the flipper arm, and a support 46 which positions the flipper arm and the actuator above a surface of the conveyor so that the flipper arm partially overlaps the conveyor when the flipper arm is in a non-activated position. The support includes a first member 46 fixedly attached to a frame of the conveyor and a second member 52 attached to the first member via a threaded screw 72 that extends through slots 70 in the first member that allow the lateral position of the flipper to be adjusted relative to the conveyor. This support structure allows the flipper arm to rotate across the surface of the conveyor belt 14 as a product approaches to direct the product to a desired location before being deactivated and returned to its non-activated position. Thus Scopatz et al. has all the structure required by claims 1-3, 5-7 and 9-10 and operates with all the steps of claims 11-12.

In regard to the limitation the ejector comprise a pivot connection between the first member and the second member, it should be noted that when only one screw 72 is used to connect the second member to the first member, it would form a pivot connection between the first member and the second member. Thus ejector of Scopatz et al may be said to comprise a pivot connection.

5. Claims 6 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by MacMillan (U.S. Patent No 5,010,998).

MacMillan shows an ejector used in a product determination and separation line including a conveyor belt for transferring product from a first location. The ejector comprises a flipper arm 10, an actuator 6 for rotating the flipper arm, and a support 2 which positions the flipper arm and the actuator above a surface of the conveyor so that the flipper arm partially overlaps the conveyor when the flipper arm is in a non-activated position. This support structure

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allows the flipper arm to rotate across the surface of the conveyor belt 14 as a product approaches to direct the product to a desired location before being deactivated and returned to its non-activated position. Thus MacMillan has all the structure required by claim 6 and operates with all the steps of claims 11-12.

6. Claims 6 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Pelletier (U.S. Patent No 5,217,104).

Pelletier shows an ejector used in a product determination and separation line including a conveyor belt for transferring product from a first location. The ejector comprises a flipper arm 1, an actuator 5 for rotating the flipper arm, and a support 9 which positions the flipper arm and the actuator above a surface of the conveyor so that the flipper arm partially overlaps the conveyor when the flipper arm is in a non-activated position. This support structure allows the flipper arm to rotate across the surface of the conveyor belt 14 as a product approaches to direct the product to a desired location before being deactivated and returned to its non-activated position. Thus Pelletier has all the structure required by claim 6 and operates with all the steps of claims 11-12.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scopatz et al. (U.S. Patent No. 4,595,091).

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Assuming for the sake of argument that the some part of the flipper arm (such as 58) does not overlap the conveyor when in a non-activated position as illustrated in Scopatz et al., it should be noted that the slots 70 in support member 46 allow the lateral position of the flipper to be adjusted. This would provide a suggestion to a person of ordinary skill in the art at the time of the invention to laterally reposition the flipper relative to the belt with the result that the flipper arm overlaps a portion of the belt.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hejmanowski shows an ejector flipper with a simplified structure that operated in the fashion of the present invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (703) 305-9734. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher P Ellis can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



KATHY MATECKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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